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August 25, 2010

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Framework for Broadband Internet Service*, GN Docket No. 10-127

Dear Ms. Dortch:

Yesterday, Tim Regan, Senior Vice President – Global Government Affairs, Corning Incorporated, Tom Cohen, attorney for the Fiber to the Home Council, Edward Naef, Cambridge Strategic Management Group, and the undersigned of Wiley Rein LLP, on behalf Corning Incorporated, met with Austin Schlick, Julie Veach, Royce Sherlock, and Christopher Killion of the Office of the General Counsel and Marcus Maher of the Wireline Competition Bureau. During the meeting, the participants discussed the attached presentation.

Respectfully submitted,

_*/s/ Thomas J. Navin*___
Thomas J. Navin

cc: Austin Schlick
Julie Veach
Royce Sherlock
Christopher Killion
Marcus Maher

Enclosures

Fiber-to-the-Home Council
Presentation on the
Framework for Broadband Internet Service

August 24, 2010

(GN Docket 10-127)

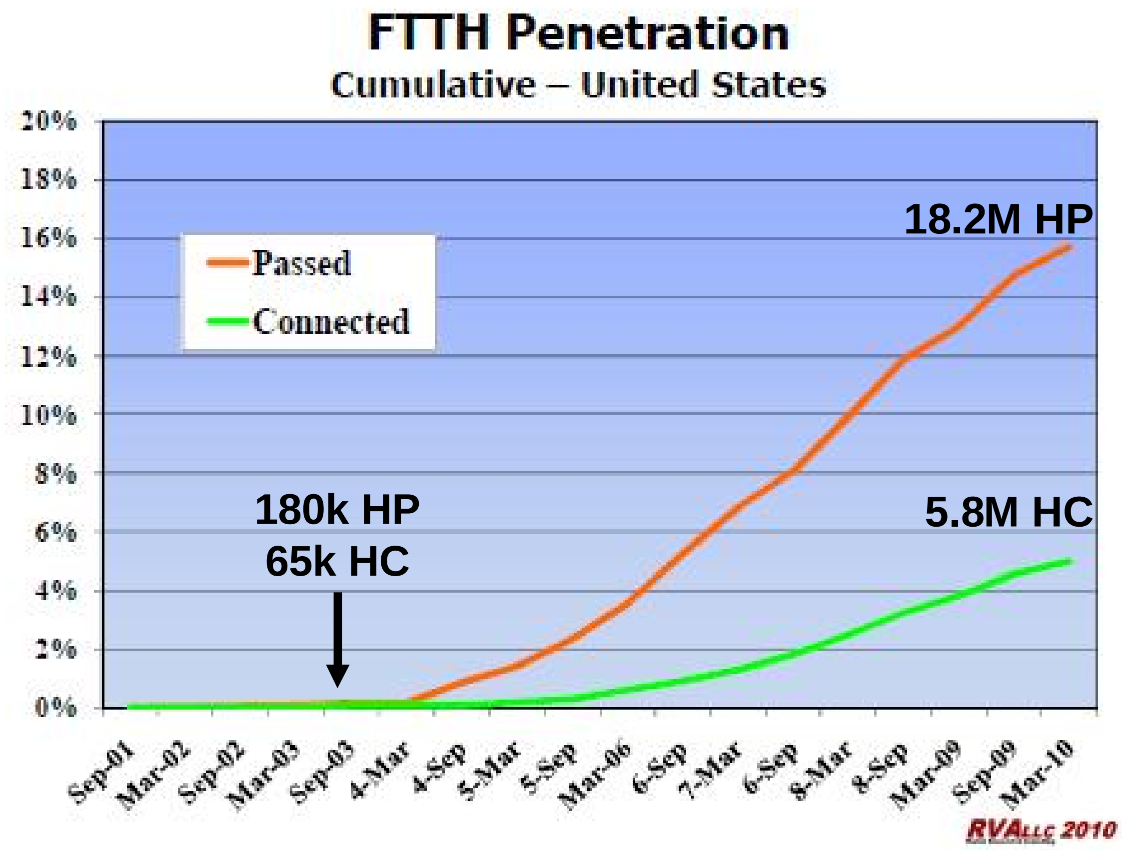
FTTH council | fiber to the home

Overview of Presentation

- **Baseline Case – Growth in FTTH Deployments over Past Decade and Potential for Future Deployments under Current Conditions**
- **Possible Legal Impact of Title II Reclassification – Obligation to Offer Transport at Wholesale**
- **Post-Title II Reclassification Business Case**
  - **CSMG Model on Impact on FTTH Deployments**
  - **Existing Examples of the Impact of Wholesaling of Transport on FTTH Business Case**

Baseline Case: FTTH Deployments*

- **Over 6 years**
  - **218% CAGR in Homes Passed**
  - **189% CAGR in Homes Connected**
  - **Over 750 FTTH providers**
- **61.4M homes could be economically served by 2015**
- **On track to meet "100 Squared" goal**



Possible Legal Impact of Title II Reclassification

- **Appreciate Commission's intention <u>not</u> to regulate broadband Internet rates or retail pricing**
- **But, Third Way proposal includes sections 201, 202, and 208 among the six Title II provisions that would apply to broadband transmission service**
- **This <u>could</u> lead to future Commissions requiring providers to offer wholesale access to broadband Internet transmission at regulated rates**

Possible Legal Impact of Title II Reclassification

- **Section 201 requires that "[a]ll charges, practices and classifications, and regulations for and in connection with . . . communication service, shall be just and reasonable…"**
- **Section 202(a) prohibits "unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services"**
- **These provisions were designed to be enforced in conjunction with section 203 tariff requirements, which provided a baseline for analyzing the type of services at issue and establishing what constitutes "reasonable"**
- **With detariffing, the Commission held that the existence of a competitive market was sufficient to ensure compliance with sections 201 and 202, thus obviating the need to undertake the difficult task of interpreting the inherently ambiguous terms**

Possible Legal Impact of Title II Reclassification

- Broadband Internet service is an inherently intertwined service currently offered at a single retail price
- Transmission is one element of the service, but it must be seamlessly integrated with a variety of computer processing functions to enable Internet access
- Consumers use broadband Internet service as a “unitary service” and pay a “unitary” retail price to do so
- Reclassifying the transmission component of the service would force providers to distinguish between--and charge separately for--transmission and the other integrated computer processing elements that make up broadband Internet service

Possible Legal Impact of Title II Reclassification

- Because the Commission does not propose requiring Section 203 tariffing, it must rely on competitive market forces to give content to sections 201 and 202 (i.e., determine what constitutes a "reasonable price" for broadband Internet services)
- However, the Commission has already made pronouncements about the competitiveness of the market that may foreclose reliance on competitive market forces
- And, it will have to formulate a rubric for determining what constitutes prohibited unreasonable discrimination in the provision of such services to retail customers

CSMG Report:
FCC Broadband Reclassification

- **Objective of Report**
  - **Examine the impact of prospective FCC regulation on investment in FTTH networks**
- **Assumptions**
  - **NOI reclassifies broadband Internet services (or transport component thereof) as Title II offering with new regulatory obligations**
  - **Among new obligations is requirement to resell transport**
    - § **ILEC would receive revenue only for wholesale service at a discount to retail**
    - § **Reseller also would be able to sell own video and voice**
  - **Reclassification also increases uncertainty and risk**

CSMG Report:
FCC Broadband Reclassification

- **Basis for Investment in Network Infrastructure**
  - **Operators considering network investments will generally use a a net present value (NPV) model to determine whether new investments are financially viable**
  - **Projects that generate a negative NPV will not receive commercial funding**

CSMG Report:
FCC Broadband Reclassification

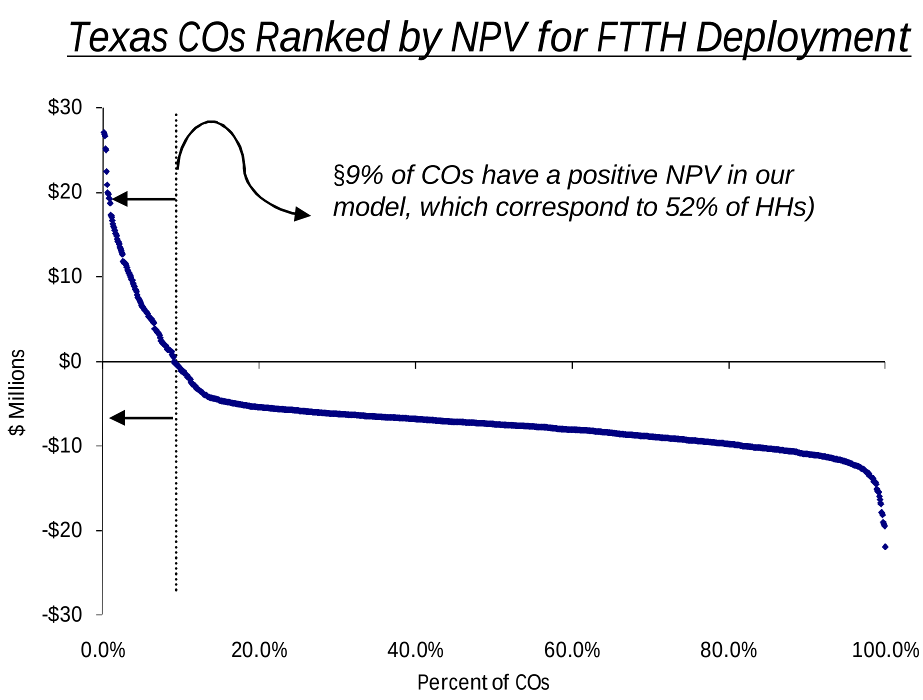
- **Study Methodology**
  - **Assessed the impact of prospective FCC regulation on FTTH economics across geographies by:**
    - **Analyzing the FTTH network deployment decision by an ILEC on a case by case basis for a representative group of COs and extrapolating the results to the United States**
    - **Comparing the outcome of the deployment decisions under current regulation against a potential future scenario in which: (1) the ILEC is required to offer regulated access; and (2) a FTTH investment is subject to greater risk associated with the prospect of increased regulation**

CSMG Report: FCC Broadband Reclassification

- **Base Case**
  - **9% of the central offices in Texas, covering 52% of the households, have a positive business case for an ILEC to deploy FTTH facilities**
  - **Extrapolating this representative geography to the United States suggests that 61.4 M households can be profitably covered with FTTH investment under the current regulatory regime**

CSMG Report: FCC Broadband Reclassification

- **Distribution of HHs by economic viability- base case**



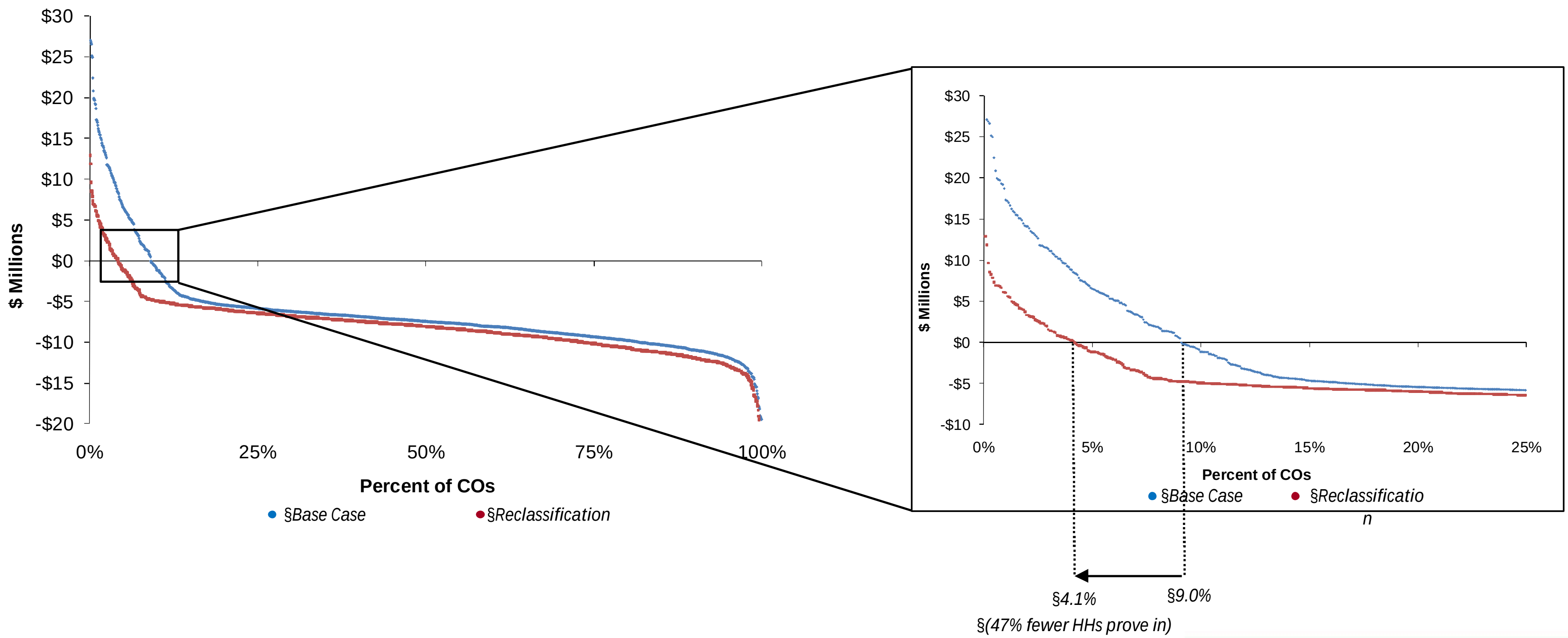
CSMG Report:
FCC Broadband Reclassification

- **Effect of Title II Reclassification**
  - **Facing increased uncertainty and risk, ILECs are likely to require a higher rate of return on investment**
  - **With 20% expected wholesale share loss and a 1% increase in required returns, reclassification would erode $13.2B of potential value created by FTTH investment**
  - **This value erosion would reduce the number of households that ILECs could financially justify serving with FTTH by 47% relative to base case, negatively impacting <u>29M households</u> nationally**

CSMG Report:
FCC Broadband Reclassification

- **Economic impact stemming from reclassification**

Texas COs Ranked by NPV for FTTH Deployment: Reclassification vs. Current Regulation



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CSMG Report:
FCC Broadband Reclassification

- **Value Erosion will impact ILECs deploying or considering FTTH deployments in different ways**
  - **Network operators that have already deployed FTTH will see their investment returns eroded**
  - **Network operators considering new investments will be able to justify 47% fewer FTTH builds on average nationally where no FTTx investments have been made**
  - **Case for upgrading from FTTN to FTTH also presumably will be significantly impacted**

FCC Broadband Reclassification: FTTH Open Access Deployments

- **17 FTTH Open Access Deployments in the United States**
- **FTTH Council interviewed operators at two of these open access deployments – Jackson Energy Authority and UTOPIA – and gathered information on the Grant County PUD open access deployment**
- **Conclusion: Open access FTTH deployments on which transport is sold at wholesale have not proven to be economically self-sustaining through customer revenues alone**